



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2103

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Preston Bryant  
Secretary of Natural Resources

David K. Paylor  
Director

Francis L. Daniel  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **SPECIAL ORDER BY CONSENT WITH PERDUE FARMS INCORPORATED VPDES Permit No. VA0003808**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Perdue Farms, Incorporated for the purpose of resolving certain violations of environmental law and/or regulations. This Order supersedes and replaces the Consent Special Order issued to Perdue Farms, Incorporated on June 26, 2003.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Perdue" means Perdue Farms Incorporated, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Regulation" means 9 VAC 25-31-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
8. "Permit" means VPDES Permit No. VA0003808, issued April 9, 2001 and which expires April 9, 2006.
9. "VAC" means Virginia Administrative Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Perdue owns and operates a poultry-processing complex located at 22520 Landford Highway in Accomack County, Virginia (hereinafter referred to as the "Facility"). The complex includes a fresh-pack plant and a rendering plant.
2. Pursuant to the Permit, Perdue is authorized to discharge processing plant effluent (treated wastewater) from the Facility. The treated wastewater discharges into Parker Creek, a tributary to the Metomkin Bay and the Atlantic Ocean.
3. Part I.A of the Permit specifies maximum discharge effluent limitations for whole effluent toxicity and biochemical oxygen demand ("BOD"), among other things.
4. Perdue is subject to a June 26, 2003, Consent Special Order with the Board addressing treatment plant malfunctions, unpermitted discharges, and Permit limit exceedances of ammonia, total suspended solids, and whole effluent toxicity. The June 2003 Consent Special Order included the requirement that Perdue upgrade the Facility wastewater treatment control plant, among other things. In accordance with the June 2003 Consent Special Order, Perdue completed the treatment plant upgrades in January 2005 and is in compliance with terms of the order.
5. Perdue reports that Facility wastewater treatment plant upgrades have significantly improved the wastewater discharge. However, the upgrades have not resolved all Permit limit exceedances. Specifically, in May, July, August, and November 2005 Perdue submitted discharge-monitoring reports indicating the following results:

Date	Parameter	Reported Result	Limit
May 2005	Whole Effluent Toxicity	2.27 TU <sub>c</sub>	1.724 TU <sub>c</sub>
July 2005	Whole Effluent Toxicity	6.06 TU <sub>c</sub>	1.724 TU <sub>c</sub>
July 2005	BOD monthly average loading	291 lb/d	284 lb/d
Aug 2005	BOD daily maximum loading	675 lb/d	557 lb/d
Nov 2005	Whole Effluent Toxicity	6.1 TU <sub>c</sub>	1.724 TU <sub>c</sub>

6. DEQ issued Perdue Notices of Violation No.W2005-06-T-0003 on July 12, 2005, W2005-09-T-0001 on September 23, 2005, and W2005-12-T-0001 on December 16, 2005 advising Perdue of the above facts and applicable Permit, statutory, and regulatory

requirements.

7. Section 62.1-44.5(A) of the Code prohibits waste discharges or other quality alterations of state waters except as authorized by permit. Section 9 VAC 25-31-50.A and Part I.A and Part II.L of the Permit prohibit discharges to State waters except in compliance with the Permit. Part I.A. of the Permit requires that certain discharge limits be met. Perdue violated § 62.1-44.5(A) of the Code, 9 VAC 25-31-50.A of the Regulations and Part I.A and Part II.L of the Permit by failing to comply with effluent limits of the Permit as reported in May, July, August, and November 2005.

8. Perdue reports that it has undertaken corrective measures and appears to have successfully resolved the source and the occurrences of the BOD exceedances.

9. Perdue reports that despite the corrective measures that it has undertaken, it has been unsuccessful thus far in eliminating the cause of the intermittent exceedances of the Permit limitation for chronic toxicity testing related to reproduction on the invertebrate organism *Ceriodaphnia dubia*, commonly known as the water flea.

#### **SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Perdue, and Perdue voluntarily agrees, to pay a civil charge of \$18,300.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. The payment shall include Perdue's Federal Identification Number and shall reference that it is being made as a requirement of this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, VA 23240

2. Perdue shall evaluate and institute operational changes at the Facility to eliminate and/or reduce toxicity sources and comply with the Permit whole effluent toxicity limit by June 30, 2006. A report summarizing the corrective actions taken shall be submitted to the DEQ Tidewater Regional Office by July 15, 2006.

3. If upon completion of the evaluation required in Paragraph 2 above, Perdue finds that additional time beyond June 30, 2006 is needed to complete the corrective action required to eliminate and/or reduce toxicity sources and comply with the Permit whole effluent toxicity limit in accordance with Paragraph 2 above, then Perdue may petition DEQ for an extension by submitting a revised/extended schedule. Such petition must contain sufficient information to fully explain and justify any extension of the deadline, as well as a detailed proposed corrective action schedule. If the petition is approved by DEQ, the revised schedule is incorporated into this Order.

4. Perdue shall conduct monthly whole effluent toxicity test for six months, beginning with the first month after completion of the corrective action specified in Paragraph 2 or 3 above, using procedures outlined in Part I.D. of the Permit. Monitoring results shall be submitted to the DEQ Tidewater Regional Office within 20 days of receipt of monitoring results.
5. Perdue shall comply with the terms of the Permit.

#### **SECTION E: Administrative Provisions**

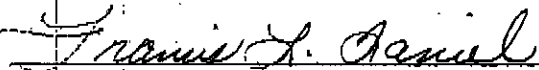
1. The Board may modify, rewrite, or amend the Order with the consent of Perdue, for good cause shown by Perdue, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above-cited Notices of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the sewage treatment plant as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For the purposes of this Order only, Perdue admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Perdue consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Perdue declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Perdue to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Perdue shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Perdue shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Perdue shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. The reasons for the delay or noncompliance;
  - b. The projected duration of any such delay or noncompliance;
  - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any Condition above, which Perdue intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Perdue. Notwithstanding the foregoing, Perdue agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Perdue. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Perdue from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Perdue voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of March 16, 2006.

  
Francis L. Daniel, Tidewater Regional Director for  
David K. Paylor, Director  
Department of Environmental Quality

Perdue Farms Incorporated voluntarily agrees to the issuance of this Order.

By: John K. Chlada  
Date: \_\_\_\_\_

State of Maryland  
~~Commonwealth of Virginia~~  
~~City~~ County of Wicomico

The foregoing document was signed and acknowledged before me this 18 day of

January, 2007, by John K. Chlada, who is  
Name

V.P. ENVIRONMENT of Perdue Farms Incorporated, on behalf of the corporation.  
Title

Allen Dale Whitehead  
Notary Public

My commission expires: June 1, 2007.